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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,894	07/26/2001	Jon A. Brewster	10006968-1	8647

7590 09/22/2005
HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

EXAMINER	
POKRZYWA, JOSEPH R	
ART UNIT	PAPER NUMBER
2622	

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/916,894

Applicant(s)

BREWSTER ET AL.

Examiner

Joseph R. Pokrzywa

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached Office action. (See 37 CFR 1.116 and 41.33(a)).

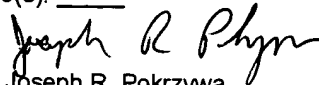
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s): _____.
13. ☐ Other: _____.


Joseph R. Pokrzywa
Primary Examiner
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DETAILED ACTION

Response to Amendment

1. Applicant's amendment to independent **claims 1 and 12** was received on 8/22/05, and will not be entered because they raise new issues that would require further consideration and/or search.

Particularly, the amendment to claim 1 adds a limitation that requires that an increased detected activity level results in an increased number of copies of the publication being printed, which therein raises new issues, requiring further search and consideration. Continuing, the amendment to claim 12 adds a limitation that requires that the monitoring activity is performed in order to detect proximity of potential customers, which therein raises new issues, requiring further search and consideration.

Response to Arguments

2. Applicant's arguments received on 8/22/05 with respect to independent **claims 9 and 21**, have been fully considered but they are not persuasive.

3. In response to applicant's arguments regarding the rejection of claim 9, which was cited in the Office action dated 6/27/05 as being anticipated by Smith (U.S. Patent Number 5,630,103), whereby applicant argues on page 12, as well as pages 16-18, that Smith fails to teach of checking the time stamp in response to a customer ordering a publication, since, applicant notes, that Smith teaches that the date of the file is checked upon a new file being received. As read in column 3, lines 13-18, Smith teaches that the receiving personal computers

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are subscribers of newspapers. Because of this, the receiving computer 48 of the subscriber station 45 inherently orders publications, as subscribers of newspapers have ordered the publications for them to be delivered. With this, Smith can be interpreted as teaching of checking a time stamp on a most recently printed publication stored in a storage area, as read in column 6, lines 48-67, and column 7, line 47-column 8, line 26, being in response to a customer ordering a publication, which is inherent in the subscribing process.

4. Continuing, applicant argues on page 12 that Smith fails to teach if a time stamp on a most recently printed publication stored in a storage area is checked, since in Smith, as argued, there is no mention of storage of a recently printed publication in a storage area. As discussed in the Office action dated 6/27/05, Smith states in column 5, lines 34-40, that the subscriber station representation 45 has the procedure of “reproducing visually the newspaper copy 15 being transmitted into the visible copy 46 reproduced from files extracted from the data flow stream received at the radio receiver unit 47 and stored in the computer 48 for reproduction upon a viewing screen or printer.” Thus, the visible copy 46, as seen in Fig. 1, is printed by the printer, being extracted from the received data stream, so as to be viewed by the subscriber, as well as being stored in the computer. With this, Smith further teaches in column 7, line 58-column 8, line 26 that “the receiving software compares the received date with the date of the file already stored on the receiving computer 48”. This comparison is used to determine whether a fresher version of the publication is available, as read in column 8, lines 58-62. Thus, Smith can be interpreted as teaching of, in response to a customer ordering a publication, performing the step of checking a time stamp on a most recently printed publication is electronically available, as currently recited in claim 9.

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5. Further, applicant argues on page 13 that Smith fails to teach of when it is determined that a fresher version of the printed publication is not electronically available, the most recently printed publication stored in the storage area is delivered to the customer. Smith teaches in column 7, line 52-column 8, line 65 that the version of the newspaper file delivered to the customer is a file stored in the storage area, which as discussed above is the most recently printed publication, when it is determined that a fresher version of the publication is not available, as seen in Fig. 6B. Thus, Smith can be interpreted as teaching of delivering the most recently printed publication to the customer when it is determined that a fresher version of the publication is not available, as is currently required.

6. Therefore, the rejection of **claim 9**, as cited in the Office action dated 6/27/05 under 35 U.S.C.102 as being anticipated by Smith *et al.*, is maintained.

7. In response to applicant's arguments regarding the rejection of **claim 21** to Smith *et al.*, whereby applicant argues on pages 19-22, that Smith fails to teach of monitoring the activity level around a physical location of a publication delivery system, that Smith fails to teach if the timing and number of printed publications printed by a printing mechanism are based on the activity detected by a response system, and that Smith fails to teach of reading a time stamp on a most recent printed publication. As discussed above in the discussion of claim 9, Smith can be interpreted as teaching of reading a time stamp on a most recent printed publication. Continuing, as read in column 7, lines 25-40, Smith states that "The receiving computer 48 monitors its connection to the FM subcarrier receiver 47 until it begins receiving the data stream. It then monitors the incoming data stream until it detects the synchronization sequence." Thus the FM

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sub carrier receiver 47 can be interpreted as monitoring the activity level around the physical location of the publication delivery system 45, seen in Fig. 1. Further, as discussed above, Smith teaches that the activity level of the data signals is monitored by the FM subcarrier receiver 47, as read in column 7, lines 34-57. With this, Smith teaches that timing of the publications and the number of printed publications is based on the detected activity level, as read in column 5, lines 24-46, and column 7, line 41-column 8, line 65. Particularly, in column 8, lines 27-33. Smith teaches that the timing of the publications is based on the monitored level of activity, wherein the “receiver checks the data stream to ensure that it receives the end of data block and synchronization sequences. If it does it restarts the receive process. Otherwise, it again begins monitoring the data stream for the synchronization sequence.” Further in column 5, lines 24-46, Smith teaches that the number of printed publications is based on the monitored activity level, wherein “the visible copy 46 reproduced from files extracted from the data flow stream received at the radio receiver unit 47 and stored in the computer 48 for reproduction upon a viewing screen or printer.”

8. Therefore, the rejection of *claim 21*, as cited in the Office action dated 6/27/05 under 35 U.S.C.102 as being anticipated by Smith *et al.*, is maintained.

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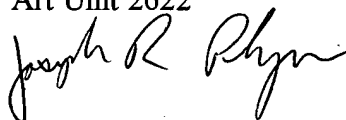
Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joe Pokrzywa whose telephone number is (571) 272-7410. The examiner can normally be reached on Monday-Friday, 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward L. Coles can be reached on (571) 272-7402. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Joseph R. Pokrzywa
Primary Examiner
Art Unit 2622



jrp